



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5260
Facsimile: (202) 418-5527

Division of Market Oversight

CFTC letter No. 06-08
April 21, 2006
No-Action
Division of Market Oversight

Dr. Ekkehard M. Jaskulla
Director - Head of Section
Legal Affairs and Membership
Section Markets and Regulatory
Eurex Deutschland
Neue Borsenstrasse 1
60485 Frankfurt/Main
Germany

Re: Request for Amendment of No-Action Letter to Eurex Deutschland – CFTC Staff
Letter No. 99-48 (August 10, 1999)

Dear Mr. Jaskulla:

On August 10, 1999, the Division of Trading and Markets (T & M) of the Commodity Futures Trading Commission (Commission) issued a no-action letter¹ in which it confirmed that it would not recommend that the Commission institute enforcement action against Eurex Deutschland (Eurex) or its members if current and future Eurex members installed additional Eurex electronic trading terminals in members' offices located in the United States or if Eurex made available for trading certain additional contracts under the terms of the no-action letter issued to its predecessor, Deutsche Terminbörse.² Specifically, T & M stated that it would not recommend that the Commission institute enforcement action against Eurex or its members solely based upon Eurex's failure to obtain contract market designation pursuant to Sections 5 and 5a of the Commodity Exchange Act (Act) if: (i) Eurex members use Eurex terminals located in the U.S. to trade for their proprietary accounts through the Eurex Trading System (System); (ii) Eurex members who are registered with the Commission as futures commission merchants (FCM) use Eurex terminals located in the U.S. to submit orders from U.S. customers for submission to the System; (iii) Eurex members who are registered with the Commission as FCMs or who are exempt from such registration pursuant to Rule 30.10 (Rule 30.10 firms) accept orders through U.S. automated order routing systems (AORS) from U.S. customers for submission to the System; and/or (iv) the additional contracts listed in the Eurex no-action letter were made available for trading through the System in the manner set forth in clauses (i), (ii), or (iii) above. On October 25, 2004, the Division of Market Oversight (Division) amended the

¹ CFTC Staff Letter No. 99-48 (August 10, 1999) (Eurex no-action letter).

² CFTC Staff Letter No. 96-28 (February 29, 1996).

Eurex no-action letter to reflect additional circumstances and arrangements relating to the agreement of Eurex Clearing AG and The Clearing Corporation to enter into a clearing link arrangement that was not applicable at the time of the issuance of the Eurex no-action letter.³

By letter dated January 30, 2006, you requested an amendment to the above no-action relief to enable Eurex members that are U.S.-registered commodity pool operators (CPO) and commodity trading advisors (CTA), or firms that are exempt from such registration pursuant to Commission Rule 4.13 or 4.14, to enter orders directly into the System through terminals located in the United States on behalf of the pools which they operate or the customer accounts over which they exercise trading discretion, respectively, provided that an FCM or Rule 30.10 firm acts as clearing firm with respect to the trading activity of such CPO or CTA members.⁴

You represent that CPOs and CTAs generally have sought to become exchange members in order to obtain a more favorable fee arrangement or to enjoy the trading immediacy made possible by direct access to an exchange's electronic trade matching engine. Specifically, a number of U.S. CPOs and CTAs have expressed their interest in becoming trading members of Eurex and thereby be able to enter trades directly into the System. This would benefit the pools operated by the CPO and the U.S. customer accounts for which the CTA has trading discretion.

With respect to membership generally, you represent that Eurex has a single category of exchange membership, which is available to commercially organized business entities. An entity having a principal office outside of Germany may apply for membership, provided that it is subject to banking or exchange supervision in its home country and that its regulator has the authority to exchange information with the German regulatory authorities. A prospective Eurex member must demonstrate to Eurex that it is duly organized and appropriately licensed to do business in its home jurisdiction and is otherwise fit and proper to become a member of Eurex. Trading members must also meet minimum financial requirements.

In addition, trading members must have their positions guaranteed by a member of Eurex Clearing AG, unless they are themselves clearing members of the exchange. Eurex Clearing AG is itself a party to the guarantee between the clearing member and the trading member. Under this guarantee, all positions duly entered into by the trading member are guaranteed by the clearing member without limitation.⁵

The Division has reviewed the requested amendment and its earlier no-action letter, as

³ CFTC Staff letter No. 04-31 (October 25, 2004).

⁴ The Division recently has issued no-action letters permitting, subject to conditions, CPO and CTA members of Euronext Amsterdam and NYMEX Europe Limited to enter orders through trading terminals located in the United States for the pools which they operate or the accounts over which they have discretionary authority, respectively. CFTC Staff Letters No. 05-16 (August 26, 2005) and No. 05-24 (December 16, 2005).

⁵ The approximately 90 members of Eurex Clearing AG are categorized as either direct clearing members (DCMs) or general clearing members (GCMs). Only GCMs may clear transactions on behalf of nonaffiliated non-clearing members. Credit institutions, banks, and other financial institutions that are regulated by a member country of the European Union or Switzerland may become clearing members (as can the branch offices of those entities if the branch office is comprehensively regulated by a European Union member state or Switzerland). GCMs must have at least €125 million (approximately \$135 million) in regulatory equity capital.

amended, and has determined that granting the amendment, subject to the condition below, should not have a significant impact on the no-action relief as granted and would not be contrary to public policy. Accordingly, the Division confirms that it will not recommend that the Commission institute enforcement action against Eurex or its members solely based upon Eurex's failure to seek designation as a contract market or registration as a derivatives transaction execution facility under Sections 5 and 5a of the Act⁶ if Eurex members who are registered with the CFTC as CPOs or CTAs, or who are exempt from such CPO or CTA registration pursuant to Commission Regulation 4.13 or 4.14, and who wish to submit orders on behalf of U.S. pools they operate or U.S. customer accounts for which they have discretionary authority, respectively, use Eurex terminals located in the U.S. for transmission of such orders to the System, provided that an FCM or Rule 30.10 Firm acts as clearing firm with respect to all activity conducted by such CPOs and CTAs through the submission of orders on the System. This no-action position is subject to compliance with the following condition:

All orders that are transmitted through the System by a member of Eurex that is operating pursuant to the no-action relief provided herein will be solely for the member's own account unless (i) such member is registered with the CFTC as an FCM or is a Rule 30.10 Firm, or (ii) such member is registered with the CFTC as a CPO or CTA, or is exempt from such registration pursuant to Commission Regulation 4.13 or 4.14, provided that an FCM or Rule 30.10 Firm acts as clearing firm with respect to all activity conducted by such CPO or CTA through the submission of orders on the System.⁷

Except as stated herein, the Division notes that its no-action position does not relieve Eurex from compliance with the terms and conditions set forth in the Eurex no-action letter. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion. The Division specifically notes that its no-action position does not alter the general requirement that a firm operating pursuant to the no-action relief provided herein must be appropriately registered or exempt from such registration to engage in the offer or sale of a foreign futures contract or a foreign option transaction for or on behalf of a United States customer.

The no-action position taken herein is taken by the Division only and does not necessarily reflect the views of the Commission or any other unit or member of the Commission's staff. It is based upon the information and representations contained in Eurex's request for no-action relief and the amendment thereto. Any materially different, changed, or omitted facts or circumstances may render this letter void. In addition, please be advised that the Commission is currently evaluating the no-action process in order to determine if that process should continue to be used in addressing requests for making foreign board of trade contracts directly accessible from the

⁶ The Eurex no-action letter referred only to contract market designation because at that time there was no provision in the Act or rules thereunder governing a derivatives transaction execution facility. Because of the creation of that category of board of trade under the Commodity Futures Modernization Act, the Division amended its relief accordingly.

⁷ This supersedes the following condition enumerated in the Eurex no-action letter: All orders that are transmitted through the System by a member of Eurex that is operating pursuant to the no-action relief provided herein and that is not registered with the Commission as an FCM or that is not a Rule 30.10 Firm will be solely for the "proprietary accounts" of such Eurex member.

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U.S. As the Division emphasized in the Eurex no-action letter, the no-action position set forth therein is intended to provide immediate, interim relief to Eurex and its members pending any adoption of rules or guidelines by the Commission regarding the use and placement in the U.S. of automated trading systems or AORs that provide access to the products of foreign boards of trade. Thus, the no-action letter will cease to be effective in the event that the Commission or its staff adopts generally applicable rules or general guidelines regarding the issues addressed by the no-action relief, and Eurex will be subject to those rules or guidelines.

If you have any questions regarding this correspondence, please contact Duane C. Andresen, Special Counsel, Division of Market Oversight, at (202) 418-5492.

Very truly yours,

Richard A. Shilts
Director

cc: Julius Seiffert, Legal Counsel, Eurex Deutschland
Gregory C. Prusik, Vice-President, Compliance and Registration, NFA
Branch Chief, Audit and Financial Review Unit, Division of Clearing and Intermediary Oversight, Chicago Regional Office